

STATE OF MINNESOTA
IN SUPREME COURT



In Re:

Supreme Court No-Fault Standing Committee
Proposed Rule Change for No-Fault Arbitration

Recommendations of Minnesota Supreme Court No-Fault Standing Committee

April 22, 2022

Hon. Joseph R. Klein, Minneapolis
Chair

Hon. Paul Thissen, St. Paul
Liaison Justice

Lindsey Carpenter, Minneapolis
Anu Chudasama, Minneapolis
James F. Dunn, Eagan
Denise S.S. Fullerton, Roseville
John J. Gores, Vadnais Heights
Kevin Kirchner, Eagan

Suzanne Wolbeck Kvas, Eagan
James Reichert, Maple Grove
Angela C. Shackleford, Hopkins
Christy Thorson, St. Cloud
Brendan Tupa, Golden Valley
Jeanette Wong, Eden Prairie

Summary of Committee Recommendations

The No-Fault Act provides that the Minnesota Supreme Court shall promulgate rules to govern the administration of certain no-fault arbitrations. The Supreme Court has promulgated these rules, and these rules provide for the creation of the No-Fault Standing Committee under the Minnesota No-Fault Insurance Act.

The No-Fault Standing Committee was granted the power to review these rules and propose amendments to these rules, which would assist in increasing the effectiveness, efficiency, and fairness of no-fault arbitrations. Minn. No-Fault Ins. Arb. R. 43.

The No-Fault Standing Committee has determined that Minn. No-Fault Ins. Arb. R. 5, 8, and 14 as currently written fail to provide for an effective, efficient and fair process for designating the format for the arbitration hearing as well as for setting the venue of the arbitration for purposes of appeal to the district court. According to the American Arbitration Association's (AAA's) *2021 Annual Report Minnesota No-Fault*, 97% of arbitration hearings were held remotely (52% video/Zoom and 45% telephonic) while only 3% were in-person. The shift to remote hearings instead of in-person hearings is expected to continue.

However, the rules as written are silent as to designation of hearing format and as to venue for purposes of appeal to the district court for remote hearings. This has resulted in parties requesting changes to the scheduled format at varying times during the process, often just days before the scheduled arbitration hearing. This has placed an undue burden on the Arbitration Organization, Arbitrators, and the parties and has inhibited the effective, efficient, and fair administration of justice in both the arbitration proceedings and in appeals to the district court.

To provide for the effective, efficient, and fair administration of justice, the No-Fault Standing Committee has approved and proposes the Minnesota Supreme Court amend Minn. No-

Fault Ins. Arb. R. 5, 8, and 14 to provide for: 1) Establishing that the county of venue for both the arbitration proceedings and for generating arbitrator strike lists when the claimant is a Minnesota Resident be based on the claimant's residential address as of the date of filing or, for claimants who are not Minnesota residents, be based on the Minnesota Judicial Center in Ramsey County, Minnesota, where the Minnesota Supreme Court is chambered; 2) Authorizing the format of the arbitration hearing to include In-person, Teleconference, Videoconference, other electronic medium, or Documents Only; and 3) A procedure for objection to a Claimant's stated residential address and/or requested hearing format, with determination of the disputed address to be made by the Arbitration Organization with the sole appeal to be made to the No-Fault Standing Committee, and determination of the format to be made by the assigned arbitrator.

Therefore, the No-Fault Standing Committee unanimously recommends that the proposed amendments be adopted by the Minnesota Supreme Court.

Public Comment

The proposed rule changes have not been put out for public comment, but the Committee does recommend the public be provided a period of time for comment on the changes.

Effective Date

The Committee recommends that the proposed rule amendments be made effective 60 days after an order from the Minnesota Supreme Court.

Style of Report

The recommendations to existing rules are depicted in traditional legislative format, completely underscored to indicate new language and ~~lined through~~ to show deletions.

Proposed Amendments

Rule 5. Initiation of Arbitration

g. Insurer's Response. Within 30 days after receipt of the itemization of benefits claimed and supporting documentation from claimant, respondent shall serve a response to the petition setting forth all grounds upon which the claim is denied, ~~and~~ accompanied by all documents supporting denial of the benefits claimed.

At the time of serving its response to the petition, Respondent shall also serve any objection to the hearing format claimant selected in the petition as well as any objection to the address listed as claimant's residential address at the time of filing of the petition. Failure to object to the hearing format requested or the residential address used in the petition within 30 days constitutes waiver of any such objections.

~~There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the arbitration organization's auspices.~~

Rule 8. Selection of Arbitrator and Challenge Procedure.

The arbitration organization shall send simultaneously to each party to the dispute an identical list of four names of persons randomly chosen from the panel of arbitrators who have agreed to serve within a 50-mile radius of claimant's residence at the time of the filing of the petition. If the claimant resides outside the state of Minnesota, the list of names shall be chosen from the panel of arbitrators who have agreed to serve within a 50-mile radius of the Minnesota Judicial Center in Ramsey County Minnesota, where the Minnesota Supreme Court is chambered.

Each party to the dispute shall have seven business days from the date of transmission in which to cross out a maximum of one name objected to, number the remaining names in order of preference, and return the list to the arbitration organization. In the event of multiparty arbitration, the arbitration organization may increase the number of potential arbitrators and divide the strikes so as to afford an equal number of strikes to each adverse interest. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

One of the persons who have been approved on both lists shall be invited by

the arbitration organization to serve in accordance with the designated order of the mutual preference. Any objection to an arbitrator based on the arbitrator's post appointment disclosure must be made within seven business days from the date of transmission of the arbitrator disclosure form. Failure to object to the appointed arbitrator based upon the post-appointment disclosure within seven business days constitutes waiver of any objections based on the post-appointment disclosure, subject to the provisions in Rule 10. An objection to a potential arbitrator shall be determined initially by the arbitration organization, subject to appeal to the Standing Committee.

If an acceptable arbitrator is unable to act, or for any other reason the appointment cannot be made from the submitted list, the arbitration organization shall have the power to make the appointment from among other members of the panel without the submission of additional lists. If any arbitrator should resign, be disqualified, or unable to perform the duties of the office, the arbitration organization shall appoint another arbitrator from the no-fault panel to the case.

Rule 14. Date, Time, Format, Venue, and Place of Arbitration.

An informal arbitration hearing will be held in ~~the arbitrator's office or some other appropriate place in the general locale within a 50-mile radius of the claimant's residence, or other place agreed upon by the parties.~~ one of the following formats: In-person, Teleconference, Videoconference, other electronic medium, or Documents Only. The arbitrator may fix the date, time, format, and place for the hearing. In person hearings will be in the arbitrator's office or some other appropriate place in the general locale within a 50-mile radius of the claimant's residence as of the date of filing.

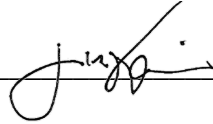
Notwithstanding the format or physical location of an in-person hearing, venue of the arbitration hearing shall be the county of the claimant's residence as of the date of filing. Any appeal or judicial review to the district courts shall be to the Minnesota district court of the county in which the claimant resides as of the date of filing. If the claimant resides outside the state of Minnesota as of the date of filing, the venue of the arbitration proceedings shall be Ramsey County, Minnesota, where the Minnesota Supreme Court is chambered. ~~arbitration organization shall designate the appropriate place for the hearing.~~

At least 14 days prior to the hearing, the arbitration organization shall transmit notice thereof to each party or to a party's designated representative. Notice of hearing may be waived by any party.

When an arbitration hearing has been scheduled for a day certain, the courts of the state shall recognize the date as the equivalent of a day certain court trial date in the scheduling of their calendars.

Respectfully submitted,

MINNESOTA SUPREME COURT
NO-FAULT STANDING COMMITTEE

A handwritten signature in black ink, appearing to read "Joseph Klein", is written over a horizontal line.

Hon. Joseph Klein
No-Fault Standing Committee Chair